

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Universal Service Reform	)	WT Docket No. 10-208
	)	
Mobility Fund	)	
	)	

To:    The Commission

**COMMENTS OF T-MOBILE USA, INC.**

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T-Mobile USA, Inc. (“T-Mobile”) submits these comments in response to the Commission’s above-captioned Notice of Proposed Rulemaking (“NPRM”) proposing the creation of a Mobility Fund to make available support for mobile voice and Internet service in unserved areas.<sup>1</sup>

**INTRODUCTION AND SUMMARY**

Reform of the Universal Service Fund (“USF”) high-cost mechanisms is long overdue, and T-Mobile supports the Federal Communications Commission’s efforts to further the goal of the National Broadband Plan (“NBP”) to promote the build-out of third generation (“3G”) or better services.<sup>2</sup> The NBP commits the United States to continue leading the world in mobile broadband innovation and correctly recognizes that “[m]obile broadband is the next great challenge and opportunity for the United States.”<sup>3</sup> If properly structured and funded, the Mobility Fund can help meet that challenge and take advantage of the economic opportunities

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<sup>1</sup> *Universal Service Reform*, Notice of Proposed Rulemaking, 25 FCC Rcd 14716 (2010) (“NPRM”), 75 Fed. Reg. 67060 (Nov. 1, 2010).

<sup>2</sup> Federal Communications Commission Omnibus Broadband Initiative, *Connecting America: The National Broadband Plan* at 146-48 (2010) (“NBP”), available at <http://download.broadband.gov/plan/national-broadband-plan.pdf>.

<sup>3</sup> *Id.* at 9.

that would come with significantly extending deployment of mobile voice and Internet service and cost-effectively making advanced mobile services available to consumers in rural and other unserved areas.

At the same time, however, T-Mobile has significant concerns that the proposed Mobility Fund is too small to accomplish its stated goal—“to significantly improve coverage of current-generation or better mobile voice and Internet service in [unserved] areas ... and to do so by supporting private investment.”<sup>4</sup> A fund of \$100 million to \$300 million limited to funding network construction realistically cannot make significant headway in bringing mobile broadband services to unserved areas.<sup>5</sup> The *Broadband Availability Gap* estimated that the total “investment gap” for providing wireless broadband to the unserved population of the United States is \$12.9 billion.<sup>6</sup> Given that the remaining unserved areas in the United States are the most difficult and costly to serve—and the least attractive to private investment—the proposed Mobility Fund will not even amount to a down payment on the support required to cover a significant portion of those areas.

T-Mobile has similar concerns with the proposed design of the reverse auction mechanism. Determining support by means of a reverse auction is generally an efficient method of minimizing the support needed to expand deployment, resulting in an effective use of limited

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<sup>4</sup> NPRM, 25 FCC Rcd at 14717, at ¶ 1.

<sup>5</sup> For purposes of these comments, when we refer to “mobile broadband,” we mean mobile broadband capable of 3G or better service.

<sup>6</sup> *Connect America Fund*, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657, 6805 (2010) (App. C: Omnibus Broadband Initiative Technical Paper No. 1, *The Broadband Availability Gap* (“*Broadband Availability Gap*”). This estimate was provided for fixed wireless service, but it should offer a rough approximation of the order of magnitude of the support needed for mobile broadband services.

USF resources. The auction design proposed in the NPRM would help ensure that mobile broadband service is extended to unserved areas using the smallest possible subsidy. The proposed mechanism, however, needs retooling if it is to achieve the Commission's goals and encourage as many participants in the auction as possible.

To take advantage of the cost savings that can result from reverse auctions while also ensuring entry by at least one new competitor, T-Mobile has supported auction designs that will distribute support to more than one winning bidder in each service area. The NPRM, on the other hand, proposes to award support only to a single bidder based on a service area of the bidder's own choosing.<sup>7</sup> Awarding support exclusively to one provider in any given area, especially an area defined by the winning bidder, will allow incumbent carriers to create monopolies in unserved areas, diminishing competition and resulting in higher costs for consumers.

Thus, to the extent the Commission moves forward with an auction design that allows only a single winning bidder in each service area, it should adopt certain modifications to the design to help ensure the auction remains competitive and reaches efficient results. In particular, the Commission should adopt restrictions on the package bids that bidders can submit, such as requiring that they also submit separate bids on the component tracts making up the package. In addition, it should impose an overall cap on the amount of support that any single entity can be awarded in the auction. These safeguards will help minimize the risk of an uncompetitive auction process.

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<sup>7</sup> NPRM, 25 FCC Rcd at 14721-24, 14736, at ¶¶ 11, 15, 18, 67.

## DISCUSSION

### I. TO BE SUCCESSFUL, THE PROPOSED MOBILITY FUND REQUIRES CERTAIN MODIFICATIONS

#### A. The Mobility Fund Should be Much Larger

The Commission's proposal to offer one-time mobile broadband funding has two significant flaws. First, both initial funding and ongoing support are necessary to sustain the viability of broadband service and ensure that customers in those areas have access to advanced communications and information services "that are reasonably comparable to those services provided in urban areas," as the Communications Act of 1934, as amended (the "Act") requires.<sup>8</sup> Second, even assuming that one-time funding would be sufficient to make deployment of mobile broadband services economically attractive in some areas and that other funding sources would be sufficient to facilitate deployment where ongoing support is also necessary, the proposed amount is still woefully inadequate.

As the Commission itself has recognized, of the billions of dollars required to fund a wireless network covering all unserved areas, the bulk of the cost will be incurred in ongoing operational expenses.<sup>9</sup> While the NPRM suggests that support for those areas where both initial funding and ongoing support are needed would be met by the Connect America Fund ("CAF") or other funding mechanisms,<sup>10</sup> however, the Commission has not yet moved forward with a proceeding to create such mechanisms, and it is still too early to know the extent to which they

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<sup>8</sup> See 47 U.S.C. § 254(b).

<sup>9</sup> See *Broadband Availability Gap*, 25 FCC Rcd at 6809 (showing a breakdown of the cost of a wireless network covering unserved areas attributing \$19.4 billion for ongoing costs out of a total of \$28.8 billion). See also NBP at 137, Exh. 8-B.

<sup>10</sup> NPRM, 25 FCC Rcd at 14720, at ¶ 8 (proposed Connect America Fund intended to address "the availability of broadband on an ongoing basis").

will benefit wireless carriers. Unless the CAF and other future support mechanisms are fully available to wireless carriers, limiting the Mobility Fund to one-time, as opposed to initial and ongoing, support for mobile broadband networks will leave the “next great challenge and opportunity” offered by mobile broadband largely unmet.<sup>11</sup>

Accordingly, the Commission should make available sufficient support to fund the ongoing costs of mobile broadband networks in rural areas. If this support is not provided through the Mobility Fund, then the Commission must closely coordinate the Mobility Fund with the other broadband support mechanisms yet to be created, so that wireless carriers have a competitive opportunity to serve unserved areas and so that wireless customers in those areas have access to mobile broadband services. Absent an existing roadmap for use of the CAF for this purpose, it would be prudent to earmark a portion of Mobility Fund support for ongoing operations of the services deployed with the support of Mobility Fund auction awards.

At the same time, the Commission’s proposed funding amount is simply too small to make deployment of mobile broadband services economically attractive in some areas. As noted above, the Commission has estimated the total “investment gap” for providing wireless broadband to the unserved population of the United States at \$12.9 billion.<sup>12</sup> Even if the initial capital costs were only one-third of the total cost of deploying mobile broadband,<sup>13</sup> the initial capital investment “gap” – the support needed to extend mobile broadband services to unserved areas – would be roughly four billion dollars, over and above what the market can be expected to

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<sup>11</sup> NBP at 9.

<sup>12</sup> *Broadband Availability Gap*, 25 FCC Rcd at 6805.

<sup>13</sup> *See id.* at 6809, Exh. 4-AB (showing a breakdown of the cost of a wireless network covering unserved areas of \$9.4 billion for the initial capital investment out of a total of \$28.8 billion).

provide. Although it is difficult to estimate what proportion of that capital investment would be allocated to areas where no additional ongoing support is needed, the NBP estimated that one-time support for deployment or upgrades will be sufficient to provide broadband to 46 percent of the currently unserved housing units in the United States.<sup>14</sup> The NBP does not estimate what proportion of total broadband support would be required for one-time funding of those 46 percent of households, but the amount is likely in the billions. Simply put, the proposed Mobility Fund would not even begin to cover a significant portion of costs even in those areas in which one-time funding might be sufficient.

Moreover, the NBP pointed out that the high-cost support recaptured from Verizon and Sprint will total \$3.9 billion over a ten-year period.<sup>15</sup> Given this source of potential funding and the tremendous need for additional support for expanded 3G or better coverage of unserved areas, the Commission should set aside a much larger amount for mobile broadband funding. One possible approach might be to conduct an auction using an initial funding of \$300 million and then assess the resulting deployment to determine whether there is a need for additional funding for a second auction from the money recaptured as a result of the Verizon and Sprint mergers. This measured approach would ensure that additional funding will be made available if necessary. In any event, the Commission should make a reasoned decision about the size of the Mobility Fund based on evidence of the support needed to ensure that broadband service continues to be available to customers being served under the fund.

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<sup>14</sup> NBP at 138. This data is not specific to wireless broadband services, but the proportion of total needs that can be met with one-time support overall should at least provide a rough approximation of the same ratio for wireless broadband services.

<sup>15</sup> *Id.* at 147.



**B. Although T-Mobile Opposes Limiting Support to a Single Winner in Each Area, the Reverse Auction Design Proposed in the NPRM Could Promote Competition if Certain Additional Safeguards Are Included**

T-Mobile previously has advocated allowing multiple eligible telecommunications carriers (“ETCs”) to receive support in reverse auctions to promote competition, and it opposes the proposal in the NPRM to limit support to a single winner in any given service area.

Nevertheless, by adopting certain safeguards, the Commission can ameliorate some of the anticompetitive effects associated with a single winner. As an initial matter, the Commission should refine its proposal to allow bidders to define the areas they intend to serve. Allowing bidders to define service areas would give them a chance to win support in an auction by focusing on areas where they might have unique competitive advantages, but it also could have the disadvantage of allowing one or more large low-cost carriers to dominate an auction by making package bids that cover a large number of geographic areas. Such an auction design inevitably would deter other providers from participating in an auction that they know they cannot win, thereby resulting in a less competitive process and correspondingly higher winning bids.

The imposition of certain safeguards, however, could lessen possible anticompetitive effects. For example, limiting package bidding to certain predefined areas would prevent one or two large bidders from locking up large portions or the most desirable portions of unserved areas. The Commission could define non-overlapping packages of service areas in order to force bidders to serve the least desirable and highest cost areas if they wish to serve the more desirable and lower cost areas, while allowing bidders to realize economies of scale. As an alternative to (or perhaps in addition to) predefined bidding packages, the rules could require parties

submitting package bids also to submit bids for the individual tracts comprising the packages, providing the Commission flexibility in choosing among possibly overlapping bids.<sup>16</sup>

Finally, as a backstop, to prevent one or two large bidders from dominating an auction, the Commission should cap the total amount of support that could be awarded to any single bidder, or affiliated group of bidders. The cap could be set at a specific dollar amount or as a percentage of the amount to be awarded in a given auction. In order to maximize the competitive and efficiency benefits of a reverse auction, the cap would have to be low enough to prevent one or two carriers from dominating the auction, thereby guaranteeing a wider range of bidders, but not so low as to preclude economies of scale.<sup>17</sup>

Use of such a cap would be unlikely to add any significant complexity to the auction. Because the amount of funding proposed in the NPRM is insufficient to provide support in all unserved areas that will receive bids at auction, the Commission will be required to specify, in formulating the auction rules, some method of prioritization of geographic areas. For example, one approach might be to rank the areas that are the subject of the winning bids based on “POPs,” with support going first to the areas with the highest population covered. Another approach could be rank geographic areas that include extensive road mileage ahead of those that do not. Knowing this prioritization rule, each bidder would know in advance that some of its bids might be rejected even if it is the only bidder a given geographic area. Consequently, a simple extension to the prioritization rule—namely, that no single bidder could receive more than some pre-defined amount of support—would have little effect on bidding strategy or the

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<sup>16</sup> The aggregate amount of the individual bids would not need to be same as the total amount of the package bid, given different economies of scale.

<sup>17</sup> Because a bidder would not know which, if any, of its bids would ultimately win support, it might submit bids totaling more than the cap.

conduct of the auction in general. It would, however, give smaller bidders more assurance that they will have a reasonable chance of winning some support in the auction, which would improve competition, resulting in more bids, and thereby lower the amount of support needed to serve a given set of geographic areas.

Finally, in comparing bids, the Commission should take into account bidders' spectrum holdings so that carriers with spectrum in the lower bands are not afforded an unfair advantage due to lower build out costs over those with higher band spectrum holdings. As the Commission recognized in the *14<sup>th</sup> Wireless Competition Report*, lower-frequency spectrum possesses superior propagation characteristics that create certain advantages in the provision of mobile wireless broadband service, especially in rural areas.<sup>18</sup>

**C. Choosing Bids Based on Per-Unit Support for Census Blocks is an Effective Means of Identifying and Distributing Support to Unserved Areas**

The proposal to choose winning bids on the basis of support "per-unit" (basing the number of "units" on population and other factors) in each bidder's self-defined area is an effective means of allowing a comparison among disparate bids on the basis of a common measure. Support can then be distributed to the bidder with the lowest per-unit bid throughout

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<sup>18</sup> *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd 11407, 11411-28, ¶ 4 ("14<sup>th</sup> Wireless Competition Report"); see also *id.* at 11571, ¶ 269 n.731 (citing *United States of America v. AT&T Inc. and Dobson Communications Corp.*, Competitive Impact Statement (filed Oct. 30, 2007) (citation omitted)) ("...the propagation characteristics of [1900 MHz PCS] spectrum are such that signals extend to a significantly smaller area than do 800 MHz cellular signals. The relatively higher cost of building out 1900 MHz spectrum, combined with the relatively low population density of the areas in question, make it unlikely that competitors with 1900 MHz spectrum will build out their networks to reach the entire area served by the two 800 MHz Cellular providers.").

its defined service area, then to the bidder with the next-lowest per-unit bid throughout its defined area, until the available fund is exhausted. By bringing service in this manner to those unserved areas that require the least subsidy, the available funding can be used to support the greatest population,<sup>19</sup> thereby maximizing the number of households that can be served quickly, as recommended by the NBP.<sup>20</sup>

T-Mobile agrees that, in addition to population, other characteristics, such as road miles, traffic density, topography, spectrum, and/or the presence of community anchor institutions, should be taken into account in calculating the number of units in a tract for purposes of comparing bids. By increasing the calculated number of units in a tract or package service area, a bid of a given total dollar amount would register as a lower per-unit bid. Bids to serve such areas accordingly would be lower than they would have been if these factors had not been taken into account, thereby channeling more Mobility Fund support into challenging, high cost areas. Taking road miles into account, for example, would increase the number of units in the most sparsely populated areas. Another similar example would be variability in topography, which would increase the number of units in hilly areas or areas with challenging terrain.

T-Mobile also supports the proposal to identify unserved areas on a census block level while requiring bidders to define the areas they intend to serve on a census tract basis.<sup>21</sup> The use

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<sup>19</sup> NPRM, 25 FCC Rcd at 14724, at ¶ 19.

<sup>20</sup> NBP at 141.

<sup>21</sup> The NPRM notes that census tracts have between 1,500 and 8,000 inhabitants and average about 4,000 inhabitants. Each tract consists of multiple census blocks, and every block fits within a tract. NPRM, 25 FCC Rcd at 14724-25, at ¶¶ 21, 25 & n.33. The NPRM proposes to use American Roamer data identifying the coverage of wireless services and the census data that becomes available in the first quarter of 2011 in determining which census blocks are unserved. *Id.* at 14724, ¶¶ 21-22.

of census blocks and tracts provides a neutral measuring unit that will not favor any single provider. Census blocks are small enough to pinpoint locations where support is needed, and census tracts are large enough to sustain a viable bid. Areas should be identified as unserved if they lack access to *mobile* broadband. Disqualifying an area that is served through non-mobile technologies from Mobility Fund support would defeat the entire purpose of the Fund.

Because pockets of unserved areas exist even in states with generally high levels of mobile broadband service, any census tract in the United States with an unserved census block should be identified as unserved for purposes of Mobility Fund reverse auctions. To the extent that funding constraints make that goal impossible, prioritization among census tracts should be based on the percentage of census blocks that have no mobile wireless service at all in a given tract and then the percentage of blocks that have no mobile broadband service in a given tract. That approach would ensure that support would first be distributed to the most unserved tracts nationwide, irrespective of whether those tracts are located in states with generally adequate mobile broadband service.

#### **D. Winning Bidders Should Have to Meet Reasonable Performance Requirements**

T-Mobile agrees with the NPRM's proposal to impose reasonable performance requirements on winning bidders. Winning bidders should be required to cover at least 95 percent of the resident population of unserved census blocks in the areas covered by their bids.<sup>22</sup> A requirement of 100 percent coverage would undermine NBP service objectives because it would deter bids to serve substantially unserved high-cost areas. T-Mobile agrees that, to the extent a winning bidder covers less than 100 percent of the previously unserved population in a

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<sup>22</sup> NPRM, 25 FCC Rcd at 14728, at ¶ 34.

tract for which it submitted the winning bid, support should be based on the percentage of coverage actually provided.<sup>23</sup> Thus, a winning bidder that ultimately serves 95 percent of the previously unserved area within the tract or area for which the bid was submitted will receive 95 percent of its per-unit bid amount. Winning bidders should be required to market their services actively throughout the areas for which they bid.

The NPRM proposes that any new tower built to satisfy Mobility Fund performance obligations should provide an opportunity for collocation, and that Mobility Fund support should be conditioned on the nondiscriminatory provision of data roaming.<sup>24</sup> Both of these requirements would facilitate competition and further the goal of universal service. T-Mobile also agrees that winning bidders should be required to demonstrate that they provide service at data rates comparable to those provided by networks using HSPA or EV-DO. Winning bidders should be required to certify that they meet the reasonable comparability principle set forth in Section 254(b)(3) of the Act and be prepared to provide data to support that certification upon request.<sup>25</sup> T-Mobile supports the proposal to require winning bidders to agree to meet specified milestones as a condition of support, including reaching 50 percent of the required coverage within one year after qualifying for support.<sup>26</sup>

Winning bidders should also be required to provide data from post-construction drive tests showing transmission rates of 200 kbps uplink and 768 kbps downlink supporting mobile voice and data to handheld mobile devices at vehicle speeds up to 70 MPH. In establishing such

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 14728, ¶ 36.

<sup>25</sup> *Id.* at 14728-29, ¶¶ 37-38.

<sup>26</sup> T-Mobile does not agree, however, that funding should be delayed pending satisfaction of each milestone. *See* NPRM, 25 FCC Rcd at 14742, at ¶ 92. *See also* Section III, *infra*.

proof-of-deployment standards for the Mobility Fund, however, the Commission should be careful not to impair carriers' ability to provide customers with levels of service that exceed this minimum threshold. T-Mobile is concerned that local zoning authorities might rely on the Mobility Fund threshold coverage and service standards as a pretext to deny carriers' right to build new towers or collocate on additional sites once their coverage meets the Mobility Fund standards. Wireless carriers' decisions about coverage and service quality should be driven by customer demand and not limited to a one-size-fits-all standard.<sup>27</sup> Therefore, the Commission should make clear that any Mobility Fund coverage or service standards are in fact minimum thresholds, and that meeting these standards does not mean that carriers should not seek to further improve coverage or service. Winning bidders also should be required to file annual reports for five years demonstrating the coverage provided in the areas covered by their bids, including maps showing the scope of and signal strength in the covered areas, the population in those areas and information regarding efforts to market the service and any drive test data.<sup>28</sup>

#### **E. T-Mobile Supports Reasonable Eligibility Requirements**

T-Mobile supports reasonable eligibility restrictions to ensure that only those carriers that are qualified to extend service to unserved areas gain access to Mobility Fund support. While requiring that applicants have ETC status in order to be eligible to bid is a reasonable means of limiting eligibility, the Commission also should permit applicants for ETC designation to participate in Mobility Fund reverse auctions. This will encourage a larger pool of bidders. If a

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<sup>27</sup> See, e.g., *Omnipoint Holdings, Inc. v. City of Cranston*, 586 F.3d 38, 49 (1st Cir. 2009) ("the district court did not adopt -84 dBm as a legal standard for whether a coverage gap exists, and neither do we"); *T-Mobile Northeast LLC v. Town of Ramapo*, 701 F. Supp. 2d 446 (S.D.N.Y. 2009) (reaffirming that whether there is a significant gap in coverage is to be determined on a case-by case basis from the perspective of the wireless carrier).

<sup>28</sup> NPRM, 25 FCC Rcd at 14729-31, at ¶¶ 39-40, 44.

winning bidder ultimately is denied ETC status, the next-lowest per-unit bidder could take its place, and all of the remaining bidders could advance to the next position.

T-Mobile agrees that an entity should hold a license, or have signed a leasing agreement, for spectrum that can support 3G or better services in order to participate in a Mobility Fund auction.<sup>29</sup> Moreover, any entity that has won such a spectrum license at auction but whose long form application is pending also should be allowed to participate in a Mobility Fund auction and be permitted to rely on that spectrum to meet its build out requirement. Entities that have pending applications for approval to acquire spectrum through assignment or transfer of control also should be eligible to bid. Allowing entities that do not have at least this degree of spectrum access to participate would make the auctions theoretical exercises contingent on future developments under the control of parties other than the Commission. Any concern that parties with pending applications might game the system by bidding on the basis of spectrum to which they do not yet have full access can be addressed. For example, an applicant whose long form application or application for approval for a spectrum leasing arrangement is denied and, therefore, ultimately fails to acquire the relevant spectrum could be subject to default penalties. And rather than specifying the spectrum frequencies and bandwidths that would qualify, the rules should require that the spectrum to which a bidder has access must be adequate for mobile broadband service.<sup>30</sup>

Finally, there is no need to require that an entity certify that it is financially and technically capable of providing 3G or better service within the specified time frame in order to

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<sup>29</sup> *Id.* at 14732-33, ¶¶ 50-53.

<sup>30</sup> *See id.* at 14733, ¶ 53.



participate in a Mobility Fund auction.<sup>31</sup> In the *ETC Designation Order*, the Commission determined that there was no need for ETC applicants to demonstrate the adequacy of their financial resources to provide the supported services throughout their designated service areas because other requirements mooted such concerns. The detailed build out plans and service quality commitments, as well as the reporting requirements, required of ETC applicants demonstrate the necessary financial resources.<sup>32</sup> The other eligibility requirements discussed above and the post-auction procedures discussed below similarly demonstrate that a Mobility Fund applicant has the necessary financial, as well as technical, qualifications to provide the mobile broadband services to be supported by the Mobility Fund. Additional certifications are unnecessary.

## **II. WITH PROPER SAFEGUARDS, THE PROPOSED REVERSE AUCTION DESIGN COULD BE A COMPETITIVE MEANS OF DISTRIBUTING MOBILITY FUND SUPPORT**

As noted above, although T-Mobile generally has opposed restricting a USF reverse auction to a single winner per service area, there are certain measures the Commission can employ to lessen the anticompetitive impact of the single winner per area requirement, especially if the other safeguards discussed above are implemented. T-Mobile agrees that the Commission should have the flexibility to supplement the general auction rules to be promulgated in this proceeding with more detailed rules governing a specific auction, to be released after further public notice specifying the areas eligible for support through the auction, scheduling and other

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<sup>31</sup> *Id.* at 14733, ¶ 54.

<sup>32</sup> *Federal-State Joint Board on Universal Service*, 20 FCC Rcd 6371, 6387-88 ¶¶ 37-39 (2005) (“*ETC Designation Order*”).

details.<sup>33</sup> T-Mobile recommends that the Commission delegate authority to the Wireless Telecommunications Bureau to specify, and seek comment on, auction terms and conditions, as it has done in the spectrum auctions context.

A single-round reverse auction would be simple and less costly for participants than multi-stage auctions and would avoid the administrative burdens of multiple-round auction models.<sup>34</sup> A single-round auction also would help to limit the ability of large carriers to dominate the auctions. In a multi-round auction, a large bidder can adjust its strategy to make sure it wins the subsequent rounds.<sup>35</sup> That possibility is eliminated in a sealed-bid, single-round auction, which can improve smaller carriers' chances of winning some of the Mobility Fund support—a more pro-competitive result that will produce lower winning bids.

In the proposed pre-auction short-form application, applicants should provide basic ownership information and certify their compliance with the eligibility requirements, including ETC status and information regarding their access to adequate spectrum.<sup>36</sup> The NPRM also seeks comment on whether applicants should be required to identify the specific census tracts with unserved blocks “on which they may wish to bid.”<sup>37</sup> Although applicants would not be required to bid on each identified tract, requiring parties to reveal their bidding strategy would seem to carry some risk to the competitive benefits of reverse auctions, thereby undermining the purpose of sealed bids. If the Commission ultimately adopts such a requirement, any

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<sup>33</sup> NPRM, 25 FCC Rcd at 14733-34, at ¶ 57.

<sup>34</sup> *Id.* at 14734, ¶ 58.

<sup>35</sup> Theoretically, a smaller carrier also could adjust its strategy in subsequent bidding rounds, but its smaller size diminishes its flexibility to do so.

<sup>36</sup> NPRM, 25 FCC Rcd at 14734-35, at ¶¶ 59-60.

<sup>37</sup> *Id.* at 14735, ¶ 61.

information in short-form applications identifying tracts on which an applicant might bid should be kept confidential.

T-Mobile supports the proposal to permit bidders to submit bids on packages of census tracts separately from their bids on individual tracts.<sup>38</sup> Such package bids may take into account scale and other efficiencies that tract-by-tract bidding would not permit. The safeguards discussed above should ameliorate any potential risks to competition arising from large package bids.<sup>39</sup>

In addition, no maximum acceptable per-unit bid amount should be established for a Mobility Fund auction. Competition will set a low ceiling for the bids, except in those extremely high-cost unserved areas that require significant support. Furthermore, in order to discourage manipulation of the bidding process or disruption of the distribution of support, any withdrawal of a bid after an auction closes should be subject to a significant penalty.<sup>40</sup>

T-Mobile also supports the proposed prohibition of communications with other bidders regarding bids or bidding strategies. Other than ownership information for each bidder, bidders' short-form applications should receive confidential treatment, especially if the application discloses the tracts for which the applicant may bid.<sup>41</sup>

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<sup>38</sup> *Id.* at 14736, ¶ 67.

<sup>39</sup> *See* Section I.B, *supra*.

<sup>40</sup> NPRM, 25 FCC Rcd at 14736-37, at ¶¶ 66, 72-73.

<sup>41</sup> *Id.* at 14737, ¶ 75.

### **III. T-MOBILE LARGELY SUPPORTS THE PROPOSED POST-AUCTION APPLICATION PROCESS AND ADMINISTRATION OF THE MOBILITY FUND**

The NPRM seeks comment on its proposal that the Universal Service Administrative Company (“USAC”) administer the Mobility Fund and asks whether any revisions to the Commission’s Memorandum of Understanding (“MOU”) with USAC would be appropriate.<sup>42</sup> USAC’s administration of the USF has come under criticism in recent years, and the Commission should consider reform of USAC’s management and operations.<sup>43</sup> Management of the Mobility Fund and associated reverse auction procedures that may be delegated to USAC will add considerable complexity to USAC’s functions, and the Commission should address how these additional responsibilities will affect USAC’s ability to manage the USF services it administers.

With respect to the post-auction application process, T-Mobile supports the proposed long-form application format:

- A long-form application would be submitted within ten business days after notification that a bidder has won Mobility Fund support;
- The application would provide detailed ownership information and show that the bidder is legally, technically and financially qualified to receive such support, including information as to its ETC status;
- A bidder failing to timely submit a proper long-form application would lose its support;

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<sup>42</sup> *Id.* at 14738-39, ¶¶ 77-78.

<sup>43</sup> *See, e.g., Office of Inspector General Releases Statistical Analyses of Audits of Universal Service High Cost Fund*, News Release (Nov. 26, 2008) (estimating erroneous high-cost fund payment rate of 23.3 percent).

- The application also would include a detailed project description identifying the proposed technology and describing each development phase of the project and providing milestone dates.<sup>44</sup>

Posting of financial security as a condition of receiving Mobility Fund support is unnecessary. As the Commission found with regard to the qualifications of ETC designation applicants in the *ETC Designation Order*, the other requirements that will be imposed more than satisfy any reasonable concern that a Mobility Fund applicant has the financial wherewithal to extend mobile broadband services to all of the unserved areas covered by a winning bid.<sup>45</sup>

The Commission should not adopt an installment payment approach to Mobility Fund distributions.<sup>46</sup> Because the Mobility Fund is intended for mobile broadband deployments that are not sufficiently economically viable to attract private funding, and construction and other costs incident to such deployments are front-loaded, the bulk of Mobility Fund support should be distributed when the application is granted. As the NPRM proposes, a winning bidder that fails to expand service in an area consistent with the project schedule in its application should be required to repay any support that it received for that area, and its affiliates should be held responsible if the bidder fails to meet its obligations.<sup>47</sup> A repayment obligation, plus interest and other possible fines or assessments, combined with all of the other proposed eligibility and post-

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<sup>44</sup> NPRM, 25 FCC Rcd at 14739-40, at ¶¶ 79-84. The proposed project schedule is roughly equivalent to the five-year build out plan that must be submitted by a carrier in its application for ETC designation. ETC build out plans must include a detailed description of all proposed improvements or upgrades on a wire center basis, with proposed start and completion dates for all improvements and their geographical coverage. *See* 47 C.F.R. § 54.202(a)(1)(ii).

<sup>45</sup> *ETC Designation Order*, 20 FCC Rcd at 6387-88 ¶¶ 37-39.

<sup>46</sup> NPRM, 25 FCC Rcd at 14742, at ¶ 92.

<sup>47</sup> *Id.* at 14742, ¶ 94.

auction requirements, should be sufficient to prevent attempts by bidders to game the system by obtaining Mobility Fund support with no intention of using it for its intended purposes.

Finally, T-Mobile agrees that recipients of Mobility Fund support should be subject to the same type of assessments and random audits that are conducted with regard to other USF recipients. Mobility Fund support recipients also should be required to retain all records pertaining to such support and to make them available to the Commission upon request for five years, consistent with the rules pertaining to recipients of other high-cost support.<sup>48</sup>

### CONCLUSION

For the foregoing reasons, T-Mobile urges the Commission to establish an adequate Mobility Fund, to be distributed in a pro-competitive manner, consistent with these comments.

Respectfully submitted,

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<sup>48</sup> *Id.* at 14743-44, ¶¶ 95-100.